

Bill No. 11-11
Introduced: June 27, 2011
By Commissioner: Matt Kluck
Enacted: August 9, 2011

MT. LEBANON, PENNSYLVANIA

ORDINANCE NO. 3187

AN ORDINANCE OF MT. LEBANON, PENNSYLVANIA
ESTABLISHING A FEE FOR STORMWATER COLLECTION AND
MANAGEMENT

WHEREAS, it appears that Mt. Lebanon, PA ("Mt. Lebanon") has constructed and/or maintains, and will continue to construct and maintain, a system including sewers and drains to collect and manage stormwater; and

WHEREAS, Mt. Lebanon desires to assess a fee for all properties that are connected with, use, are serviced by or are benefited by such system.

NOW THEREFORE, Mt. Lebanon, Pennsylvania, hereby ordains:

Section 1. Title

This chapter shall be known and may be cited as the "Mt. Lebanon, Pennsylvania Stormwater Management Fee Ordinance."

Section 2. Statement of Findings

- A. Mt Lebanon currently incurs costs to runs a stormwater system.
- B. Inadequate management of accelerated stormwater runoff throughout a watershed increases flood flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of existing streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces groundwater recharge and threatens public health and safety.
- C. Inadequate planning and management of stormwater runoff throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and crosion of stream beds and stream banks,

thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals and pathogens. Groundwater resources are also impacted through loss of recharge; stormwater is an important water resource which provides groundwater recharge for water supplies and baseflow of streams, which also protects and maintains surface water quality.

D. A comprehensive program of stormwater management is fundamental to the public health, safety, welfare and the protection of the residents of Mt. Lebanon, their resources and the environment in order to control items such as flooding, erosion and pollution.

E. The collection and conveyance system for stormwater includes underground pipes, but also includes conduits, inlets, culverts, catch basins, gutters, ditches, channels, detention ponds, streets, curbs, and drains.

F. The nature of stormwater is that any system to control stormwater must be designed for, and funds must be expended to control, peak flow, total runoff volume and pollution in the stormwater.

G. These three factors all relate to and are driven by impervious surface; once property is developed, peak flow, runoff volume and pollution all increase greatly.

H. Peak flow occurs most often during periods of intense rainfall and/or when the ground is saturated (can accept no more water) or is arid (concrete like surface resulting from overly dry conditions).

I. Because of the effect of weather on stormwater (e.g. extended dry or wet periods), no developed property can always accept all stormwater, and all developed properties therefore generate stormwater runoff.

J. In a developed, urban environment such as Mt. Lebanon, each developed property generates runoff and therefore uses or is in some fashion connected with, serviced by or benefited by the stormwater Sewerage System, which normally functions by collecting stormwater from a property and/or by preventing stormwater from entering another property.

K. Stormwater is heavily polluted when there has not been rain for a period of time, and sediment, yard waste, animal waste, pesticides, herbicides, oil and grease can be found in stormwater.

L. Impervious surface is a primary indicator of the generation of stormwater and usage of the stormwater Sewerage System.

M. The effects of stormwater runoff can be minimized by using project designs that maintain the natural hydrologic regime and sustain high water quality, groundwater recharge, stream baseflow and aquatic ecosystems.

N. Federal and state regulations (including those found at 40 CFR Part 122) require Mt. Lebanon to implement a program of stormwater controls. Mt. Lebanon is required to obtain

a permit for stormwater discharges from their separate sewer system under the National Pollutant Discharge Elimination Systems (NPDES).

O. Mt. Lebanon desires to establish fair and equitable user charges to assure that each Property and recipient of services within Mt. Lebanon will pay its proportionate share of the costs of operation, maintenance, repair, administration, replacement and improvement of all stormwater services provided or paid for by Mt. Lebanon.

P. The charges as determined herein are fair and equitable and are based upon the following facts: a minimum fee per residential unit is reasonable; the basis for the equivalent residential unit of 2400 square feet of impervious surface was based on a statistical sampling of properties in Mt. Lebanon; the requirement that a property have 800 square feet of impervious surface is reasonable based on the use of aerial photography to determine impervious surface and reasonably defines what is a developed property; the use of aerial photography provides an accurate measurement for impervious surface; the standard charge for single family dwellings is based on the fact that there is not a great deal of variation in size, nor any substantial manner to control stormwater runoff; the inclusion of townhomes as a single family dwelling takes into account the common areas; and that on commercial and institutional properties, the opportunity to control runoff in a meaningful way typically does exist and should be encouraged and acknowledged.

Section 3. Definitions

A. Words and terms used in this Ordinance and not given specific definition shall be defined as set forth in applicable statutes of the Commonwealth of Pennsylvania or ordinances of Mt. Lebanon, if any, and shall otherwise be given their ordinary and common meaning.

B. For purposes of this Ordinance, the following words and terms shall be defined as set forth below:

(1) **Equivalent Residential Unit (ERU)** - means the measure of impervious ground cover for a typical single-family residential property used in assessing the fees for each parcel of property, and which has been determined to be 2,400 square feet.

(2) **Impervious Surface** - means those hard surface areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions pre-existent to development, including, without limitation, such surfaces as roof tops, asphalt, concrete, pavers, compacted aggregate engineered and maintained for vehicular traffic or parking, paving, driveways and parking lots, private streets, walkways, patio areas, storage areas or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

(3) **Mt. Lebanon** - Mt. Lebanon, Pennsylvania, a home rule municipality.

(4) **Operation, Maintenance and Capital Costs** - The associated costs of equipment and facilities, energy, manpower, materials, property acquisition, transportation and services required to collect, convey, detain, pump and transport stormwater, flood protection, keep equipment and facilities functioning satisfactorily and economically, administer the Sewerage System and shall include sums paid to defray costs of Mt. Lebanon's improvements to the Sewerage System.

(5) **Owner** - Any person, firm, corporation, individual, partnership, company, association, society or group owning real property in Mt. Lebanon.

(6) **Property**-each lot, parcel, building or portion thereof containing 800 or more square feet of Impervious Surface.

(7) **Rental, Rates and Charges** - Sums assessed, imposed and to be collected from each Property which uses, benefits from or is serviced by the Mt. Lebanon Sewerage System or which discharges stormwater, directly or indirectly, into the Mt. Lebanon Sewerage System for the use of and the service rendered and improvement of such system.

(8) **Replacement** - The associated costs of obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the Mt. Lebanon Sewerage System so as to maintain the capacity and performance for which said system was designed and constructed; shall include costs associated with improvements to the Sewerage System.

(9) **Sewerage System** - The system of collection and conveyance, including pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, channels, detention ponds, streets, curbs, drains and all devices, appliances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining and/or treating stormwater.

(10) **Stormwater** - Includes runoff water from all precipitation events, snowmelt and springs.

(11) **User** - Any person, firm, corporation, individual, partnership, company, association, society or group using, benefiting from or being served by the Mt. Lebanon Sewerage System.

Section 4. Imposition of Rental, Rates and Charges

For the use of, benefit by and the services rendered by the Sewerage System, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, **rental**, rates and charges are hereby imposed upon each and every Property that is connected with, uses, is serviced by or is benefited by Mt. Lebanon's Sewerage System, either directly or indirectly, and upon the owner(s) of such Properties. Such rental, rates and charges are imposed on a four month basis on the first of September, January, and May of each year. Such rental, rates and charges shall be payable to Mt. Lebanon by and collected from the owners of such Properties as hereinafter provided, and shall be determined as set forth below.

A. Each Property that contains a single-family residential dwelling, townhouse, or duplex shall be charged for one (1) ERU for each individual dwelling unit. The ERU charge shall be eight dollars (\$8.00) per month.

B. The charge for each other Property within Mt. Lebanon shall be based upon the number of square feet of measured impervious surface, as determined through aerial photography and surface feature evaluation processes, expressed in whole ERUs by rounding to the next highest ERU. The charge for each other Property shall be computed by multiplying the number of ERUs for a given Property by the unit rate established by Mt. Lebanon as set forth above in subsection A above. In no event shall any Property pay a charge of less than one ERU.

C. Notwithstanding the foregoing, the following Property shall be exempt from rental, rates and charges under this Ordinance.

(1) Public Street, as defined in the Mt. Lebanon Subdivision and Land Development Ordinance.

(2) Private Street, as defined in the Mt. Lebanon Subdivision and Land Development Ordinance.

Section 5. Uniform Application of Rental, Rates and Charges

Rental, rates and charges shall be assessed, imposed, liened and collected as to all Property, owners, lots, parcels, buildings units and users.

Section 6. "User" and "Owner" Distinguished

References in this Ordinance to "use," "user," "unit" or portion of a Property, lot, parcel or building with respect to the calculation and assessment of sewer rental, rates and charges shall not be construed to modify or alter the fact that sewer rental, rates and charges shall be assessed and imposed upon the Property pursuant to 53 P.S. § 7106, et seq., as may in the future be amended, and the owner of each Property against which sewer rental, rates and charges are imposed and assessed under this Ordinance shall be and remain liable for payment of the same, whether or not such owner occupies the Property. Nothing in this Ordinance shall be construed to prohibit or limit an owner's ability to collect by lease or contract sums due by a tenant or other occupier of the owner's Property, but such lease or contract shall not bind Mt. Lebanon or limit in any way Mt. Lebanon's authority to impose, assess, lien and collect sewer rental, rates and charges.

Section 7. Billing and Collection of Rental, Rates and Charges

The rental, rates and charges fixed and established by this Ordinance shall be effective as to all Properties that use, are served or are benefited by the Mt. Lebanon Sewerage System existing as of the effective date of this Ordinance, and shall be effective to all other Properties thereof that use or are so served or benefit subsequent to the effective date of this Ordinance. Rental, rates and charges imposed by this Ordinance shall be assessed and billed by Mt. Lebanon effective as of the first day of each calendar third beginning in September or on such other basis

as the Commission or its designee shall authorize. A bill shall be prepared and mailed by Mt. Lebanon (or its designee or contractor) on or before the first business day of January, May and September of each year as to calendar quarter billing or on or before the applicable billing date for other periods to the owner of each premises served by the Mt. Lebanon Sewerage System. Such assessments shall be payable at their face amount during the 30 days next following the date on which said assessment bill was mailed. [Starting in January, 2012, a discount of 2% will be given to any Owner that pays the entire calendar year rental rates and charges]. The rental, rates and charges assessed and collection will not be subject to proration or refund by Mt. Lebanon in the event a Property is sold; provided, however, that this sentence shall not bind a buyer and seller from making their own proration of any rental, rates and charges assessed hereunder.

Section 8. Late Payment Penalty

Effective on the first day of the calendar month next following an assessment billing, a penalty of five percent (5%) of the rental, rates and charges assessed for that calendar quarter and not paid within the calendar month of the assessment shall be added for nonpayment within the time allowed.

Section 9. Interest on Unpaid Rental, Rates and Charges

Interest at the rate of ten percent (10%) per year from the first day of the calendar month next following that month in which sewer rental, rates and charges were assessed and billed shall accrue and be added to all original amounts of sewer rental, rates and charges remaining unpaid at the end of the calendar month in which the same were first imposed and assessed, and shall continue to accrue until the full amount of such rental, rates and charges is paid in full.

Section 10. Rental, Rates and Charges Constitute Lien on Property

In accordance with the Municipal Claims Act, 53 P.S. § 7101, et seq. (as amended), all rental, rates, and charges, penalties, interest, collection fees, lien filing and satisfaction fees and other charges imposed for failure to pay promptly shall constitute a lien upon and against the subject Property and its owner from the date of their imposition and assessment.

Section 11. Exemptions and Credits Applicable to Rental, Rates and Charges

Credits against Rental, Rates and Charges are an appropriate means of adjusting fees, rates, rental, charges, fines and penalties, under some circumstances, to account for applicable mitigation measures. Credit mechanisms are attached hereto as Appendix A. No exception, Credit, offset, or other reduction in rental, rates and charges shall be granted based on age, race, tax status, economic status or religion of the customer, or other condition unrelated to the demand for and cost of services provided by Mt. Lebanon.

Section 12. Appeal Procedures

A. Any owner who believes the provisions of this Ordinance have been applied in error may appeal in the following manner and sequence.

(1) An appeal of a rental, rate and charge must be filed in writing with the Public Works Director or his/her designee within thirty (30) days of the charge being mailed or delivered to the Property owner. Any appeal must state the reasons for the appeal.

(2) Using information provided by the appellant, the Public Works Director (or his/her designee) shall conduct a technical review of the conditions on the Property and respond to the appeal in writing within thirty (30) days. In response to an appeal, the Public Works Director may adjust the rental, rate and charge applicable to the Property in accordance with the provisions of this Ordinance.

(3) A decision of the Public Works Director that is adverse to an appellant may be further appealed to the Municipal Manager or his/her designee within thirty (30) days of the adverse decision. The appellant, stating the grounds for further appeal, shall deliver notice of the appeal to Mt. Lebanon Manager or his/her designee. The Municipal Manager or his/her designee shall issue a written decision on the appeal within thirty (30) days. All decisions by the Municipal Manager or his/her designee shall be personally delivered to the owner or, sent to the billing address of the customer by registered or certified mail.

(4) A decision of the Municipal Manager that is adverse to appellant may be further appealed to the Commission within thirty (30) days of receipt of the adverse decision. The Appellant, stating the ground for further appeal, shall deliver notice of the appeal to the Municipal Manager or his/her designee. The appellant shall present his appeal at the next meeting of the Commission that is at least 7 days after delivery of the appeal. The Commission shall issue a written decision on the appeal within thirty (30) days of the conclusion of the presentation. The decision of the Commission shall be final.

Section 13. Policies and Procedures Authorized

A. The Commission or its designee may by resolution adopt such policies and procedures as it deems appropriate to ensure collection of sewer rental, rates and charges assessed and imposed pursuant to this Ordinance. Without limitation, collection procedures may include referral of delinquent accounts to a collection agency; filing of liens; scire facias sur municipal lien proceedings to collect filed liens; and any and all other measures or combination thereof which the Commission may deem appropriate.

B. All costs of such collection procedures, including but not limited to fees for filing, perpetuation and satisfaction of liens, collection fees, attorney's fees, court costs, litigation expense, charges for service of documents, shall upon being incurred by Mt. Lebanon be imposed as a charge for nonpayment and added to the balance due on said owner's account. [Exhibit B contains a listing of such charges.]

C. No lien shall be satisfied, nor shall any collection proceeding be discontinued until all amounts due on an account, including rental, rates, penalties, interest, collection fees, attorney's fees, court costs and other charges are first paid in full to Mt. Lebanon.

D. The Manager is authorized to adopt any policies or procedures that the Manager deems necessary or convenient to interpret or implement this Ordinance.

Section 14. Storm Sewer Revenue Fund

The funds received from the collection of the rental, rates and other charges authorized by this Ordinance shall be deposited into a Storm Sewer Revenue Fund, a fund and account hereby created and dedicated to the operation, administration, maintenance, repair and improvement of the Sewerage System and paying Operation, Maintenance and Capital Costs.

Section 15. No Warranty or Action

Nothing in this ordinance or in the design, operation or maintenance of the Sewerage System shall be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of money damages against Mt. Lebanon, its officers, employees, or agents. Mt. Lebanon expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon Mt. Lebanon, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may not exist or hereafter be created.

Section 16. Severability.

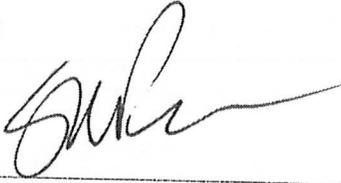
If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such invalid or unconstitutional provision of its application not been included therein.

Section 17. Effective Date

This Ordinance shall become effective on September 1, 2011, will expire August 31, 2031 unless extended by ordinance on or before that date; provided, however, that the expiration of the Ordinance will not apply to nor affect the validity and collectability of any rate, rental or charge assessed prior to such expiration date.

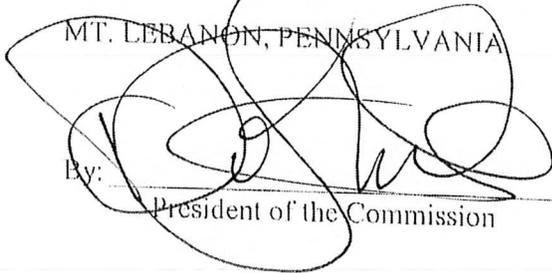
ORDAINED AND ENACTED into an Ordinance and passed by the Commission of Mt. Lebanon, Pennsylvania on this 9th day of August, 2011.

ATTEST:



Secretary

MT. LEBANON, PENNSYLVANIA



By:

President of the Commission